

**Vermont Bar Examination**  
**July, 2010**  
**Question 3**

Theresa was an 82-year-old widow. She had one son, Sam, and one daughter, Debby. Theresa owned a small home and had a modest amount of other assets.

Sam and his wife had two children, Adam and Brad, now 20 and 22. Since his wife died years ago, Sam has battled depression and has been unable to maintain steady employment. Theresa often gave Sam financial help because she was concerned about his financial situation. In 2002, she transferred some of her assets to a trust to provide for Sam and his children. The trust provides, in relevant part:

This property is being placed in trust for my son, Sam, in the “Sam Investment Trust.” All income produced by the trust shall be for Sam’s benefit. Upon Sam’s death, all income produced by the trust shall be for the benefit of Sam’s children. Other than for extraordinary circumstances, as determined by the trustee in her sole discretion, the corpus of the trust shall not be invaded. Upon the death of Sam’s last surviving child, the corpus of the trust shall be donated to the Brattleboro Public Library.

Theresa named her neighbor, Nancy, trustee of the Sam Investment Trust. Nancy was Theresa’s good friend even though Nancy did not like Sam.

Theresa’s daughter, Debby, had one child, Cindy. Debby had a flourishing business and Theresa was not concerned about Debby’s financial welfare.

When Theresa established the Trust in 2002, she also executed a simple, typed will to dispose of her remaining assets. Except for an heirloom ring, Theresa left all her property and interests “to Sam and Sam’s children, Adam and Brad, and to Debby and Debby’s daughter, Cindy, in equal shares.” Theresa left the ring to Nancy. Theresa executed the will in front of three witnesses, one of whom was Nancy. The three witnesses attested to witnessing the execution of Theresa’s will.

In June, 2010, Sam had a third child, Isabel, with his girlfriend. Sam was thrilled and promptly filed an acknowledgment of paternity with the Department of Health. A few weeks later, the doctors diagnosed Isabel with a rare, life-threatening condition. The specialist treating Isabel has informed her parents that Isabel’s best hope is an expensive, experimental surgery that is only available in a distant

hospital and is not covered by Isabel's insurance. Sam has asked Nancy, as trustee, to use the Trust corpus to pay for the surgery.

In the meantime, on their way to visit Isabel in the hospital, Theresa and Debby were killed instantaneously in a car accident.

1. Is Theresa's will valid? Discuss.
2. Assuming the will is valid, set forth and explain the likely distribution of assets under Theresa's will. As part of your discussion, identify the possible claimants and analyze the strengths and weaknesses of their claims.
3. How should Nancy respond to Sam's request? Discuss.
4. If Nancy refuses Sam's request, how should Sam proceed? Discuss.

#### **Question 4**

Paul Customer was checking out "Gifts Galore" on Main Street in Rutwich, Vermont. After perusing the offerings on the first floor, he climbed the rickety stairs to the second floor of the rustic shop. When he got there, he ran into Debra Owner, a former high school friend with whom he'd had a falling-out years ago. Debra was the sole owner of the unincorporated business and the building in which it was housed. Their conversation was friendly at first, but as they began to rehash old conflicts, it became more heated. Eventually, Debra asked Paul to leave her store.

Paul refused. "It's a free country," he said. He stood his ground after she repeated her request several times. Paul finally turned to leave a couple minutes later, after Debra picked up the phone to call the police. As he bounded down the stairs toward the exit, clad in flip-flops, Paul looked back at Debra and offered a few parting words. At that moment, he lost his balance. He reached toward the side of the stairwell as he tumbled, but there was no banister for him to use to catch himself. Paul fell down seven steps, landing hard at the base of the stairs. He cut his leg in the fall, and began losing a lot of blood.

Debra was still feeling angry at Paul. Though she was a paramedic on the local rescue squad, she didn't assist Paul after he fell. Instead, she called 911, then stormed away in anger. When the ambulance arrived, Paul was transported to the hospital for treatment.

Paul's leg healed relatively quickly. However, because he had lost so much blood, he required a transfusion in the hospital. Due to a defect in the local blood supply, Paul developed a rare, blood-borne illness that will affect his health significantly.

After the incident, Paul had a building contractor look at the stairwell where he had fallen. The contractor discovered that the tread depths were shallower than required by the local building code, and that some of the treads near the top of the stairway were loose. He is considering suing Debra for damages, including those relating to his blood-borne disease; he has retained your firm's services.

Your assignment is to draft a memo for your senior partner identifying and analyzing the potential legal and factual bases for any claims that Debra is liable for damages relating to Paul's injuries, including his illness, anticipating and analyzing her responses and potential defenses, and offering counterarguments to those responses and defenses. (You are not asked to consider the liability of any other party.)

### **Question 5**

You have been contacted by your client Transworld Credit Corporation (Transworld). They indicate that they would like you to advise them on a defaulted loan obligation given by Earth Only Home Products, Inc., a Vermont corporation (Earth Only).

Earth Only maintains a retail store located in Small Town, Vermont that sells a wide variety of natural fiber clothing. Earth Only had taken out a working capital loan in the original principal amount of \$100,000.00 on January 1, 2007. The loan was given by Small Town Bank (Bank), a Vermont bank located in Small Town, Vermont.

Prior to taking out the loan, Earth Only had exhausted all of its resources for the purchase of its initial inventory as well as a pellet burning stove to heat its retail store.

At the time the loan was given, Earth Only signed a promissory note payable to Bank. As security for the loan, Earth Only and Bank signed a security agreement which provides that Bank may take possession of all inventory, accounts and equipment of Earth Only upon the default of Earth Only on the terms of the note. In addition to describing inventory, accounts and equipment generally, the pellet stove is described by serial number.

The security agreement has been validly assigned to Transworld by a duly authorized agent of Bank. The date of the assignment was January 1, 2008.

Transworld's file includes the original contract, promissory note and assignment. In addition, the file contains a copy of a document entitled "Financing Statement" which describes the inventory, accounts, equipment and pellet stove. Earth Only is described by name and address. A valid address for Bank is given. The financing statement further states that the security is given to Bank and its successors and assigns. The financing statement has not been signed by Earth Only.

The file also contains a letter from Earth Only to Bank, dated December 27, 2007 indicating that their business is failing due to Bank failing to provide additional financing in the amount of \$75,000.00. The letter contends that additional financing was promised to Earth Only at the time the \$100,000.00 loan was originated. The letter is date stamped as received by Bank on January 3, 2008.

You have the results of a public records search concerning Earth Only. The financing statement in favor of Bank has been filed with the Vermont Secretary of State's office on

January 10, 2007. There is a second financing statement in favor of Mid-State Credit Union (Credit Union) filed with the Vermont Secretary of State's office on January 20, 2007. This describes collateral identical to that given to Bank. The financing statement in favor of Credit Union is also filed in the Small Town land records. No other filings concerning the collateral exist.

1. Discuss the way(s) Transworld may enforce the defaulted loan obligation from Earth Only. Discuss and analyze the advantages and disadvantages of any method of enforcement.
2. Discuss the defenses that may be raised by Earth Only or any other entity. What is the likelihood of success on any defenses raised?
3. What additional documentation, if any, would you seek from Bank prior to bringing any enforcement action?

#### Question 6

Automation, Inc. is a company incorporated and located in Illinois which designs, manufactures, and markets a hedge-trimming flying-saucer-like robot called the Hoomba. None of Automation's operations take place outside of Illinois. The Hoomba is not available in stores. Rather, Automation pays a cable TV marketing company to advertise the Hoomba in all 50 states. Automation ships Hoombas from Illinois to customers who order directly from the company.

Barry lives in Illinois. He purchased a Hoomba in 2004. That same year, Barry's Hoomba malfunctioned when it flew through an open window into Barry's house and caused property damage. Barry sued Hoomba in Illinois state court, claiming that the Hoomba was a defective product. During trial, the jury expressly made the factual determination that the Hoomba suffered from a defective design that caused the incident, and this factual determination was noted by the Court in the judgment. A finding of "defective design" supports a recovery for property damage or personal injury resulting from a defective product under both Illinois and Vermont law. Barry was awarded a monetary judgment in 2005, which judgment was not appealed.

In 2006, Mr. & Mrs. Carter were on vacation with their daughter Clara at their lake house in New Hampshire when they ordered and received a Hoomba. The Carters had not seen any Hoomba TV commercials, but had been told about the Hoomba by a friend from Maine who had seen the ads broadcast on TV in Maine.

After their vacation, the Carters brought the Hoomba back with them from New Hampshire to their home in Vermont. That same year, the Carters' Hoomba malfunctioned in an incident virtually identical to what happened to Barry. The Hoomba flew into an open window in the Carters' house located in Royalton, a town in Windsor County, Vermont. The Hoomba caused damage to the Carters' furniture. It also landed on then sixteen-year-old Clara's arm and caused an injury which required expensive medical care and left a permanent scar. Neither Clara nor her parents took any legal action on the matter until 2010, when Clara and her

parents asked Attorney Examinee whether any of them could sue Automation in Vermont for their damages.

Assume that a three-year statute of limitations (from the date of the incident which caused personal injury or property damage) is applicable to all potential claims, but that the three-year period did not begin to run with respect to Clara until her 18<sup>th</sup> birthday in 2008. Clara has always lived in her parents' house in Royalton, Vermont.

Answer each of the following questions separately. Do not discuss or analyze any products liability law or issues.

- 1) Analyze and discuss whether Automation is subject to being sued in Vermont.
- 2) If Attorney Examinee does file suit against Automation in Vermont, analyze and discuss in which court(s) suit may be filed.
- 3) Assuming Mr. & Mrs. Carter sue Automation in Vermont for the damage to their property, analyze and discuss how, procedurally, Automation may assert a statute-of-limitations defense.
- 4) If Attorney Examinee does file suit against Automation in Vermont on Clara's behalf, analyze and discuss the significance, if any, of the Illinois jury's "defective design" determination.

- 5) Discuss the means by which Attorney Examinee may serve Automation with a complaint if suit is filed in Vermont.